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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

Larkland Studios, LLC, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

SANDISK LLC and WESTERN  
DIGITAL CORPORATION,

Defendants.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR:**

- 1. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY;**
- 2. UNJUST ENRICHMENT;**
- 3. VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW;**
- 4. VIOLATIONS OF CALIFORNIA'S FALSE ADVERTISING LAW; AND**
- 5. FRAUD BY OMISSION**

**DEMAND FOR JURY TRIAL**

Plaintiff Larkland Studios, LLC (“Plaintiff”) brings this action on behalf of itself and all others similarly situated against SanDisk LLC (“SanDisk”) and Western Digital Corporation (“Western Digital”) (collectively, “Defendants”). Plaintiff makes the following allegations pursuant to the investigation of his counsel and based upon information and belief, except as to the allegations specifically pertaining to itself, which are based on personal knowledge.

### **NATURE OF THE ACTION**

1. Western Digital and its CEO have stated that data storage is “one of the fundamental building blocks of the technology architecture that all of us depend upon.”<sup>1</sup> Unfortunately, Defendants have sold numerous defective SanDisk and Western Digital solid-state drives (“Drives” or “SSDs”) upon which their customers can no longer depend or rely.<sup>2</sup> Defendants suggest their SSDs are appropriate for photographers, videographers, and other creative professionals and hobbyists who need to work with and preserve large data files. However, these SSDs face an extreme risk of failing within months or even days of purchase due to a design and manufacturing defect (the “Defect”). “Drive failure” in this context means that all data from the Drives is lost, including the internal file system, and new data cannot be added even if the Drive is reformatted.<sup>3</sup> The result is that tens of thousands—or hundreds of

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<sup>1</sup> *Western Digital Corporation (WDC) CEO David Goeckeler Presents At Goldman Sachs Communacopia & Technology Conference (Transcript)* Seeking Alpha (call Aug. 30, 2023), <https://seekingalpha.com/article/4633225-western-digital-corporation-wdc-presents-goldman-sachs-communacopia-and-technology-conference> (last accessed September 28, 2023); Annual Report, Western Digital Corporation at 4 (Form 10-K) (June 30, 2023) (“From the intelligent edge to the cloud, data storage is a fundamental component underpinning the global technology architecture.”).

<sup>2</sup> The specific drives at issue are the: (1) SanDisk Extreme Portable 4TB (SDSSDE61-4T00), (2) SanDisk Extreme Pro Portable 4TB (SDSSDE81-4T00), (3) SanDisk Extreme Pro Portable 2TB (SDSSDE81-2T00), (4) SanDisk Extreme Pro Portable 1TB (SDSSDE81-1T00), (5) SanDisk Pro-G40 Portable SSD, and (6) Western Digital My Passport 4TB (WDBAGF0040BGY). “TB” stands for terabyte. One TB is equivalent to 1,000 gigabytes.

<sup>3</sup> Scharon Harding, *SanDisk Extreme SSDs keep abruptly failing – firmware fix for only some promised*, ARS TECHNICA (May 19, 2023) <https://arstechnica.com/gadgets/2023/05/sandisk-extreme-ssds-keep-abruptly-failing-firmware-fix-for-only-some-promised/> (last accessed October 8, 2023).

1 thousands—of consumers and working professionals who have trusted Defendants to safely store  
2 their data have lost untold terabytes with only a paperweight in the shape of an SSD to show for  
3 it. Once lost, the data cannot be retrieved from the SSDs, and, especially for creative work such  
4 as photographs, or milestone video footage such as the recording of a wedding, such work cannot  
5 be recreated. Accordingly, Plaintiff brings this class action on behalf of purchasers of the SSDs.

6         2.       The Defect manifests in an identical manner across the Drives. Every Drive  
7 manufactured has this Defect. The Drives are thus substantially similar.

8         3.       SanDisk downplayed the issue while continuing to encourage consumers to save  
9 their memories and other data on these devices. Defendants’ one and only attempt at fixing the  
10 Defect in May 2023 was unsuccessful.<sup>4</sup> Despite this, SanDisk continues to sell the Drives and  
11 has even placed them on steep discount in what appears to be an effort to clear its shelves of  
12 defective stock.

13         4.       Defendants have not issued or announced any recall, reimbursement, or  
14 replacement program, nor have they disclosed the Defect to consumers (the “Omissions”).

15         5.       The cause of the Defect has not yet been made public.

16         6.       Data creation and data storage is a central facet of modern life. Defendants’  
17 ongoing failure to address these serious issues pertaining to the Drives is egregious and in  
18 contravention of California and federal law.

19         7.       Plaintiff Larkland Studios, LLC asserts claims on behalf of itself and a nationwide  
20 class of similarly situated purchasers of the affected Drives for: (i) breach of the implied  
21 warranty of merchantability; (ii) unjust enrichment; (iii) violations of California’s Unfair  
22 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (iv) violations of  
23 California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§ 17500, *et seq.*; and (v)  
24 fraud by omission.

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25  
26 <sup>4</sup> Sean Hollister, *We just lost 3TB of data on a SanDisk Extreme SSD*, THE VERGE (August 7,  
27 2023), <https://www.theverge.com/22291828/sandisk-extreme-pro-portable-my-passport-failure-continued>  
(last accessed October 9, 2023).

**THE PARTIES**

**A. Plaintiff Larkland Studios LLC**

8. Plaintiff Larkland Studios LLC is a Florida LLC with its principal place of business in the city of Sunrise, Florida. Plaintiff's owner, Larkland Alexander Burton purchased two (2) SanDisk Extreme Pro Portable SSD with 2TB of storage in 2021 from a retail store believed to be Best Buy. The SanDisk Extreme Pro Portable SSD remains in the possession of Larkland Studios and Mr. Burton.

9. Larkland Studios provides cinematography, editing, and directorial services and uses multiple memory drives to store its professional video and photographic images. Larkland's owner, Mr. Burton, took the SSD drives from Defendants on a photo shoot to store data from his work. Shortly after the photo shoot, Plaintiff discovered one of the SSD drives had failed, causing Plaintiff to lose all of the data stored on that drive, which contained video and photographic images taken for its business purposes. Upon discovery of the drive failure, Plaintiff stopped using both of the SSDs it had purchased.

10. Plaintiff saw and relied upon the Drive's packaging. During the time it purchased and used the Drives and due to the Omissions by Defendants, Plaintiff was not aware of the Defect affecting the Drives, and only learned of the problem after the Drive failed and erased a substantial portion of the footage Mr. Burton had taken on the photographic shoot. Had Plaintiff known about the Defect before purchasing the Drive it would not have made the purchase and would have bought an SSD from another manufacturer. Plaintiff would be willing to purchase Defendants' products in the future, so long as Defendants fix the Defect and properly label their products going forward.

**B. Defendant SanDisk**

11. SanDisk LLC is a Delaware limited liability company with its principal offices in Milpitas and San Jose, California. SanDisk is a wholly owned brand of Western Digital. SanDisk's current headquarters is located at 5601 Great Oaks Parkway, San Jose, California.

12. SanDisk LLC develops, manufactures, and sells data storage solutions, including memory cards and readers, USB flash drives, digital media players, wafers, and other related components. SanDisk sells products in the United States.<sup>5</sup>

13. SanDisk was founded in 1988 and has offices in Milpitas and San Jose, California. It makes and sells embedded flash products used in mobile telephones, laptops, e-readers, global positioning devices, and computing platforms. SanDisk provides solid state drives that can be used instead of hard disk drives.<sup>6</sup> In 2014, SanDisk received \$6.6 billion in revenue and had approximately 8,700 employees. In 2015, Western Digital announced it had agreed to acquire SanDisk.<sup>7</sup>

**C. Defendant Western Digital Corporation.**

14. Western Digital Corporation is a Delaware corporation with headquarters in San Jose, California. Western Digital describes itself as a leading developer, manufacturer, and provider of data storage devices and solutions based on both NAND flash and hard disk drive technologies. It has divisions and product segments dedicated to flash-based products (“Flash”) and hard disk drives.<sup>8</sup> In 2022, Western Digital’s Flash business segment had \$9.753 billion in revenue and its HDD segment posted \$9.040 billion in revenue.<sup>9</sup>

15. Western Digital Corporation was founded in 1970. As of 2015, it was based in Irvine, California. In 2014, it manufactured hard drives and other digital storage devices, had about 76,000 employees, and posted \$14.6 billion in 2014 revenue. In 2015, Western Digital

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<sup>5</sup> Company Report, SanDisk LLC (Bloomberg Sept. 21, 2023).

<sup>6</sup> Profile, *SanDisk*, Forbes, <https://www.forbes.com/companies/sandisk/?sh=2cf32f257519> (last accessed September 29, 2023).

<sup>7</sup> Chad Bray, *Western Digital to Buy Memory Chip Maker SanDisk for \$19 Billion*, DealBook – New York Times (Oct. 21, 2015), <https://www.nytimes.com/2015/10/22/business/dealbook/western-digital-to-buy-memory-chip-maker-sandisk-for-19-billion.html?searchResultPosition=2> (last accessed September 29, 2023).

<sup>8</sup> Form 10-K at 4.

<sup>9</sup> *Id.* at 36.

1 announced it had agreed to acquire SanDisk Corporation in a cash-and-stock transaction worth  
2 around \$19 billion.<sup>10</sup> Western Digital acquired SanDisk Corporation in 2016 and has designed  
3 and manufactured all SanDisk products since. Accordingly, Western Digital designed and  
4 manufactured the defective Drives at issue in this action.

5 16. Western Digital’s principal facilities for manufacturing Flash equipment like SSD  
6 drives are in San Jose, California and Shanghai, China. Western Digital conducts much of its  
7 research and development at the 2,205,000 square foot facility it owns in San Jose. Accordingly,  
8 Defendants both conduct business in California and the other United States.

9 **JURISDICTION AND VENUE**

10 17. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §  
11 1332(d) because there are more than 100 class members and the aggregate amount in controversy  
12 exceeds \$5,000,000, exclusive of interest, fees, and costs, and at least one Class member is a  
13 citizen of a state different from Defendants.

14 18. This Court has personal jurisdiction over Defendants because Defendants conduct  
15 substantial business within California and in this District, such that Defendants has significant,  
16 continuous, and pervasive contacts with the State of California. Additionally, Defendants’  
17 principal places of business are in this District.

18 19. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants  
19 do substantial business in this District, a substantial part of the events giving rise to Plaintiff’s  
20 claims took place within this District (e.g., the research, development, design, and marketing of  
21 the SSDs), and Defendants’ principal places of business are in this District.

22 **FACTUAL ALLEGATIONS**

23 20. Defendants sell data storage equipment based on hard disk drive technologies and  
24 on NAND flash technologies. Western Digital’s products “generally leverage a common  
25 platform for various products within product families, and in some cases across product families,  
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27 <sup>10</sup> Bray, *supra*.

1 resulting in the commonality of components” to mitigate demand changes, facilitate inventory  
 2 control, and “to achieve lower costs through purchasing economies.”<sup>11</sup> As one of Western  
 3 Digital’s two major business segments, Flash technologies are one of their common platforms,  
 4 part of which is producing solid-state or SSD drives.

5 21. Solid-state drives are a type of long-term data storage device. As the name  
 6 suggests, solid-state drives have no moving parts. Information is written and retrieved from flash  
 7 memory chips electrically.<sup>12</sup> In layman’s terms, SSDs are the next step in memory evolution after  
 8 magnetic-based “hard drives” traditionally found in desktop computers.

9 22. Traditional hard disk drives store data on a physical disk that spins around inside  
 10 a housing. In contrast, SSDs store data in integrated circuits in NAND memory chips.

11 23. For consumers’ computers, Apple introduced SSD drives on its Air laptops  
 12 around 2010. Samsung and Toshiba supplied these SSD drives for Apple at that time, although  
 13 SanDisk was allowed to make some Apple drives by 2015.<sup>13</sup>

14 24. Aside from its hard disk drive technologies, Defendants’ storage products are  
 15 based on NAND flash technology.<sup>14</sup>

16 25. Toshiba engineers Fujio Masuoka and Hisakazu Iizuka filed the first patent for the  
 17 invention of flash memory. It was originally referred to as Electrically Erasable Programmable  
 18  
 19

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20 <sup>11</sup> Form 10-K at 5.

21 <sup>12</sup> *What is a solid-state drive?*, IBM, [https://www.ibm.com/topics/solid-state-](https://www.ibm.com/topics/solid-state-drives#:~:text=A%20solid%2Dstate%20drive%20(SSD,known%20as%20pages%20or%20sectors)  
 22 [drives#:~:text=A%20solid%2Dstate%20drive%20\(SSD,known%20as%20pages%20or%20sectors](https://www.ibm.com/topics/solid-state-drives#:~:text=A%20solid%2Dstate%20drive%20(SSD,known%20as%20pages%20or%20sectors)  
 23 [rs](https://www.ibm.com/topics/solid-state-drives#:~:text=A%20solid%2Dstate%20drive%20(SSD,known%20as%20pages%20or%20sectors) (last accessed October 9, 2023).

24 <sup>13</sup> Cody Henderson, *The Ultimate Guide to Apple’s Proprietary SSDs*, beetstech (June 6, 2017),  
 25 <https://beetstech.com/blog/apple-proprietary-ssd-ultimate-guide-to-specs-and-upgrades> (last  
 accessed October 9, 2023).

26 <sup>14</sup> See Form 10-K at 4; *id.* at 5 (“Flash products provide non-volatile data storage based on flash  
 27 technology.”); *id.* at 33 (claiming to be leading developer of “data storage devices based on both  
 28 NAND flash and hard disk drive technologies”).

1 Read-Only Memory (EEPROM), but informally became known as “flash” because it could be  
2 wiped and reprogrammed as quickly as a camera flash.<sup>15</sup>

3 26. In flash technology, memory cells store information. These memory cells have  
4 floating-gate transistors that can capture an electrical charge (electrons) for extended time  
5 periods. A transistor is a type of semiconductor that can enhance or switch electrical power. This  
6 switching ability is useful for computer memory because it can function as a button or switch to  
7 change the chip’s “state” or charge condition.<sup>16</sup> Depending on where voltage is applied to a  
8 floating gate transistor, its cells can perform reading, writing, and erasing tasks.

9 27. Normally, transistors return to their original state when power is turned off, so  
10 any data in them is lost. (By analogy, a computer’s temporary or random access memory (RAM)  
11 loses its data when the computer is turned off).

12 28. Typical memory transistors have three connections (1) source, (2) drain, and (3)  
13 gate connections. Current enters through the source connection. It may escape and flow away  
14 through the drain. The gate may block the pathway and limit the current’s flow. When the gate is  
15 shut, no current can flow, turning the transistor off. When the transistor is off, it stores a zero (0);  
16 when the gate is unlocked, power flows through the transistor, activating it to store a one (1).  
17 (Computers store data through accumulations and patterns of many zeroes and ones). A basic  
18 transistor cannot remember what its state was when it was last turned off.

19 29. A flash transistor is unique because it has a third connection called a floating gate.  
20 This second gate floats on top of the first gate. “When the gate is unlocked, electricity seeps  
21 through the very first gate and lingers between the first and second gates. Even if the power is  
22 off, electricity remains circulating across the two gates.”<sup>17</sup>

23 \_\_\_\_\_  
24 <sup>15</sup> Chiradeep BasuMallick, *What is Flash Memory? Types, Working, Benefits and Challenges*,  
25 Spiceworks (Feb. 22, 2023), <https://www.spiceworks.com/tech/hardware/articles/what-is-flash-memory/> (last accessed October 9, 2023).

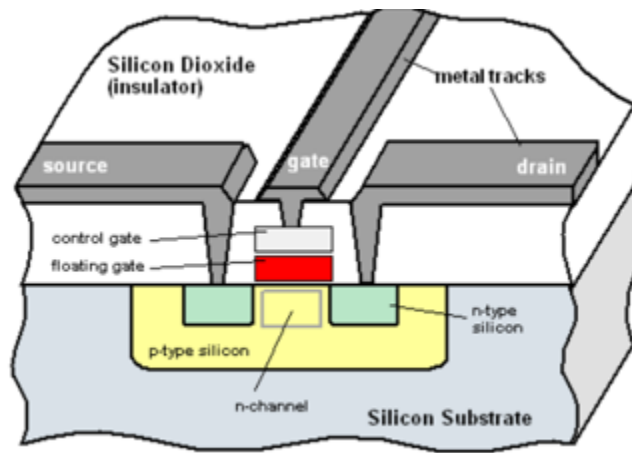
26 <sup>16</sup> *Id.*

27 <sup>17</sup> *Id.*



30. In a flash transistor, the floating gate selects the zero or one state based on the memory's state before it was turned off. If it has stored energy, that prevents new current from flowing through, and the transistor records a zero state. Clearing the stored energy allows current to flow again, and the transistor registers a one (1). "A floating gate is a way a flash transistor retains information regardless of whether or not the power is on."<sup>18</sup>

31. The following figure illustrates a floating gate transistor's parts:<sup>19</sup>



32. Flash memory devices can track tiny bits of data using "not-or (NOR)" or "not-and (NAND)" technology. Solid-state and USB flash memory sticks, cameras, videos, and audio players use NAND storage, as do the SSDs that Defendants make and sell that are the subject of this action.

33. NAND flash storage is a storage integrated circuit, sometimes called a chip. An integrated circuit is an assembly of hundreds of millions of transistors on a tiny chip that is about a half-millimeter square. Storage integrated circuits are used to store material and usually used for computers, including DRAM, SRAM, and NAND flash.<sup>20</sup>

<sup>18</sup> *Id.*

<sup>19</sup> *Flash Memory*, PC Mag Encyclopedia, <https://www.pcmag.com/encyclopedia/term/flash-memory> (last accessed October 9, 2023).

<sup>20</sup> *Electronics Basics: What Are IC, Chip, Semiconductor, and Wafer?* PCBOonline (May 28, 2021), <https://www.pcbonline.com/blog/ic-vs-chip-vs-semiconductor-vs-wafer.html> (last accessed October 9, 2023).

1           34. A chip has a package of pathways, circuits, and transistors that work together to  
2 carry out a task (or tasks). Chips are implanted in wafers. A wafer is a thin slice of  
3 semiconductor material, or substrate, that serves as the base for the chip. The wafer is usually  
4 made by purifying raw silicon into crystals, and then slicing the crystals into thin portions called  
5 wafers.<sup>21</sup>

6           35. More recently, memory uses favor 3D flash or “stacked” technology, originally  
7 developed by Samsung. This technology uses a mechanism known as a charge trap instead of  
8 floating gates, to stack multiple levels of memory cells on a single wafer to increase storage  
9 capacity.<sup>22</sup>

10          36. Flash memory involves a number of challenges or limitations that can affect  
11 performance and reliability, including wear, erasure, crosstalk, and sensitivity. Flash memory  
12 “has a finite number of program/erase (P/E) cycles” before cell integrity begins to fail. Its data  
13 must be erased in entire blocks, which can contribute to memory wear. Reading NAND flash  
14 memory can change nearby cells over time. Further, X-rays and other high-energy particles can  
15 change zeros into ones in flash memory cells.<sup>23</sup>

16          37. Manufacturers have worked to increase the density and reduce the cost per unit of  
17 NAND flash storage. For example, single-level cells (SLC) stored one bit per cell, so it was the  
18 most expensive kind of NAND flash storage, but also had the highest endurance. Then multi-  
19 level cells (MLC), triple-level cells (TLC), and quad-level cells (QLC) stored progressively more  
20 information in each cell, and were less expensive, but had less endurance.<sup>24</sup>

21 \_\_\_\_\_  
22 <sup>21</sup> *What is the Difference Between a Wafer and a Chip*, Wafer World (April 15, 2021),  
23 <https://www.waferworld.com/post/what-is-the-difference-between-a-wafer-and-a-chip> (last  
accessed October 9, 2023).

24 <sup>22</sup> BasuMallick, *supra*.

25 <sup>23</sup> Stephen J. Bigelow and Margaret Jones, *NAND Flash Memory*, TechTarget,  
26 <https://www.techtarget.com/searchstorage/definition/NAND-flash-memory> (last  
accessed October 9, 2023).

27 <sup>24</sup> *Id.*

38. Along with its cost-cutting emphasis, Western Digital states it has “developed and commercialized successive generations of 3-dimensional flash technology with increased numbers of storage bits per cell in an increasingly smaller form factor, further driving cost reductions.”<sup>25</sup>

39. A key Western Digital supplier, Kioxia, spoke at a recent conference “about their recently introduced BiCS 8th generation 218-layer NAND flash product which increases storage density by 50% from the prior Gen 6 product...”<sup>26</sup> A writer summarized the announcement as saying Kioxia “announced higher density NAND flash using denser memory columns and the use of bonded logic and memory wafers.”

40. There are many manufacturers who make SSDs. Since SSDs are used as the primary storage solution in consumer, commercial, and industrial applications, the industry tracks malfunction and error rates, and there are statistics on expected rates of drive failure (just as there are statistics on expected failure rates on many forms of commercial equipment).

41. A hard disc drive (“HDD”), on the other hand includes a spinning circular magnetic disk containing many tracks and sectors that retain data, and an actuator arm that moves across the platter to read and write data.<sup>27</sup>

42. SSDs have substantially faster read and write times granted by solid-state storage. This means that SSDs have become the de facto mode of data storage, especially in scenarios where consumers need to quickly access and store data while on-the-go. Further, in theory, and in some applications, SSDs should be more reliable because they lack all the moving parts in an HDD.

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<sup>25</sup> Form 10-K at 5.

<sup>26</sup> Tom Coughlin, *Kioxia and Samsung New Products at the 2023 FMS*, Forbes (Aug. 21, 2023), <https://www.forbes.com/sites/tomcoughlin/2023/08/21/kioxia-and-samsung-new-products-at-the-2023-fms/?sh=7f5c5a8b1143> (last accessed October 9, 2023).

<sup>27</sup> *What is a hard disk drive (HDD)?* CRUCIAL, <https://crucial.com/articles/pc-builders/what-is-a-hard-drive> (last accessed October 9, 2023).

43. Both SSDs and HDDs should be expected to last *at least* three (3) to five (5) years with regular use.<sup>28</sup> Some estimates say SSDs can last for ten years under normal workloads.<sup>29</sup> An HDD typically fails because of the immense physical stress that the metal discs are placed under as they spin. SSDs are different in that they typically fail after a large amount of data has been written to the drive.

44. Manufacturers of SSDs use “total terabytes written” (TBW) as the metric by which they estimate the useful life of the drive to consumers. For example, if an SSD had a TBW of 2,000 terabytes (“TB”), after a user had written 2,000 TB to the drive, they may begin to experience data loss and corruption.

45. The TBW metric for the Drives at issue in this case are unknown and not disclosed to consumers. However, but for the Defect, the TBW metrics for the Drives may be in the hundreds or thousands of terabytes.

46. Reasonable consumers like Plaintiff thus purchase SSDs with the expectation that they will last years before being at risk of failure.

**Defendants’ Products and the Defect**

47. The Drives, at a minimum, include:

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<sup>28</sup> Mark Coppock, *How Long Do Hard Drives (and SSDs) Last?* NEWEGG.COM (June 21, 2021) <https://www.newegg.com/insider/how-long-do-hard-drives-and-ssds-last/> (last accessed October 9, 2023).

<sup>29</sup> *Id.*

(a) SanDisk Extreme Portable 4TB (SDSSDE61-4T00);



(b) SanDisk Extreme Pro Portable 4TB (SDSSDE81-4T00);



(c) SanDisk Extreme Pro Portable 2TB (SDSSDE81-2T00);



(d) SanDisk Extreme Pro Portable 1TB (SDSSDE81-1T00);



(e) SanDisk Pro-G40 Portable SSD; and



(f) Western Digital My Passport 4TB (WDBAGF0040BGY).



48. Defendants are engaged primarily in the manufacture and sale of computer drives and data storage solutions, and they are a near household name when it comes to SSDs.

49. Both SanDisk (before it was acquired) and Western Digital have been players in the data storage market for decades. SanDisk was founded in 1988 and Western Digital was founded in 1970 as General Digital Corporation.



1           50. Because of their longstanding position at the top of the market, consumers have  
2 grown to recognize the Western Digital and SanDisk branded drives as being high-quality,  
3 dependable, products.

4           51. Defendants lean into their reputability and represent their Drives as being high-  
5 quality and dependable.

#### 6 **Defendants' Marketing and Representations**

7           52. Defendants represent the quality of their flash memory products through their  
8 marketing statements. Western Digital disclosed to investors and the SEC that "We perform our  
9 marketing and advertising functions both internally and through outside firms utilizing both  
10 consumer media and trade publications targeting various reseller and end-user markets."<sup>30</sup>  
11 Therefore, Defendants make their marketing, promotional literature and other advertising  
12 strategies and decisions at their headquarters in California, and their packaging, websites, other  
13 advertising, and other marketing decisions emanate and flow from from their California  
14 headquarters to customers in California, Florida, and the rest of the United States. Defendants  
15 have marketed their SSDs on YouTube, which has its headquarters in San Bruno, California.<sup>31</sup>

16           53. Manufacturers project their marketing messages through their websites,  
17 reviewers' guides, product labels, packaging and associated documentation, and advertising or  
18 user forums.

19           54. Defendants' product labels include statements that convey to consumers their  
20 Drives are durable and capable of saving, storing, and retrieving data such as: "Sustained  
21 performance for professional grade videos and photos"; "High-speed storage designed to keep  
22 you moving"; and "Supercharged speeds. Ultra-rugged durability."

23           55. Western Digital represented on its website that "the SanDisk Extreme PRO  
24 Portable SSD provides powerful solid-state performance in a rugged, dependable storage

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25 <sup>30</sup> Form 10-K at 9.

26 <sup>31</sup> *Where Is the Headquarters of YouTube?* [https://www.worldatlas.com/articles/where-is-the-](https://www.worldatlas.com/articles/where-is-the-headquarters-of-youtube.html)  
27 [headquarters-of-youtube.html](https://www.worldatlas.com/articles/where-is-the-headquarters-of-youtube.html) (accessed October 15, 2023).



solution,” and “Get powerful NVME™ solid state performance featuring 2000MB/s2 read/write speeds in a portable drive that’s reliable enough to take on any adventure.”<sup>32</sup>

56. Similarly, on Sandisk’s website, it represented that its Extreme Pro line of SSDs are “a rugged, dependable storage solution” that are “reliable enough to take on any adventure.”<sup>33</sup> Defendant further makes essentially the same representations about its line of Extreme SSDs, describing them as “portable, reliable storage,” “durable drive[s] that can take a beating” and as a “brand professional photographers trust to take on assignments”<sup>34</sup> and Professional Pro-G40 SSDs as offering “incredible performance” that are “ultra-fast, ultra-rugged” and “[d]esigned with exceptional technology and materials to ensure the SSD’s ultra-durable exterior matches its powerful interior.”<sup>35</sup>

57. Defendants intended to create the reasonable expectation among purchasers that their SSD drives were able to conform to those specifications.

58. For example, an advertisement on B&H Photo Video’s website states the “SanDisk Extreme Portable SSD is tough enough to take” into the field and “ensures your data is ready” thanks to its “durable and secure features,” including dust and water resistance, drop protection and encryption. Another part of the ad shows the product next to a camera lens, and states the drive is “ideal for any creative professionals such as photographers or videographers working on projects while out in the field.”<sup>36</sup>

<sup>32</sup> <https://www.westerndigital.com/products/portable-drives/sandisk-extreme-pro-usb-3-2-ssd?sku=SDSSDE81-1T00-G25> (last accessed October 9, 2023).

<sup>33</sup> <https://www.westerndigital.com/products/portable-drives/sandisk-extreme-pro-usb-3-2-ssd?sku=SDSSDE81-1T00-G25> (last accessed October 9, 2023).

<sup>34</sup> <https://www.westerndigital.com/products/outlet/portable-drives/sandisk-usb-3-2-ssd?sku=SDSSDE30-1T00-G25> (last accessed October 9, 2023).

<sup>35</sup> <https://www.westerndigital.com/products/portable-drives/sandisk-professional-pro-g40-ssd?sku=SDPS31H-001T-GBCND> (last accessed October 9, 2023).

<sup>36</sup> *SanDisk 2 TB Extreme Portable SSD V2 (Black)*, B&H Photo-Video-Audio, <https://www.bhphotovideo.com/c/product/1595432->

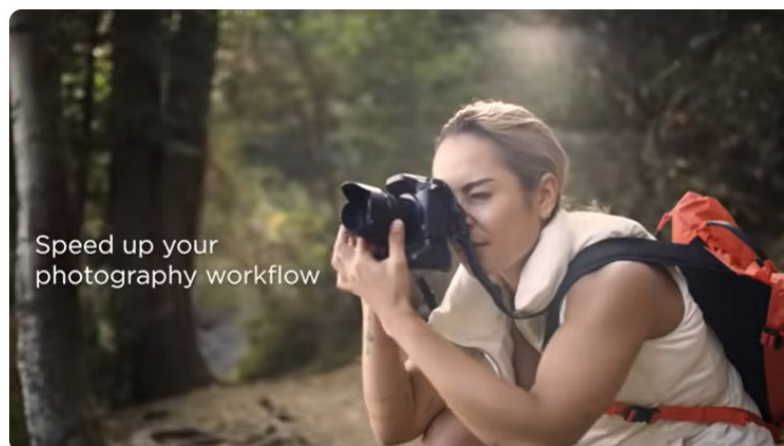
### It Goes Where You Go

Use the handy carabiner loop to attach the drive to your belt loop or backpack for extra security when you're out in the world. Travel worry free thanks to a durable silicon shell that offers a premium feel and added protection to the drive's exterior, making this drive ideal for any creative professionals such as photographers or videographers working on projects while out in the field.



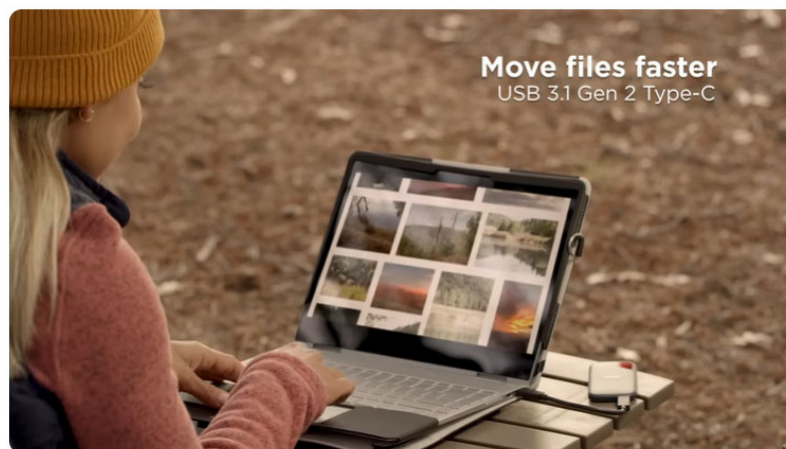
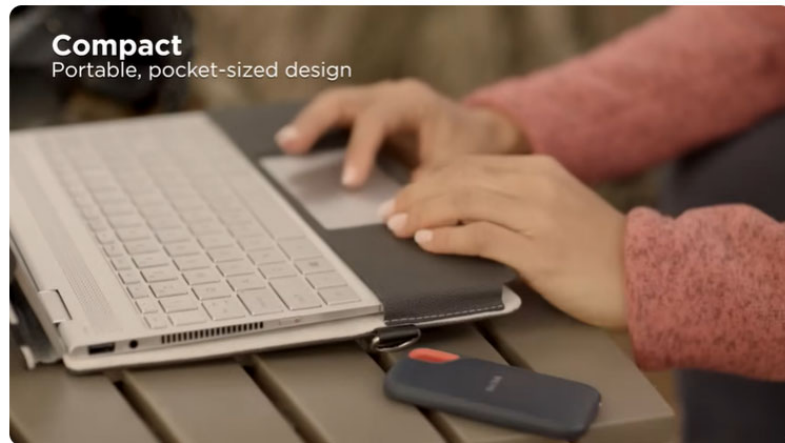
59. A YouTube video from SanDisk embedded on that SanDisk page includes a scene of the SSD product hitched to a laptop computer showing photographs on the computer's screen. Another scene from the YouTube video showed an SSD drive suspended in a forest, with a callout stating, "Up to 2 Meter Drop Protection." Another scene shows the SSD product with the captions SanDisk Extreme® Portable SSD and "IP55\* Water & Dust Resistant," meaning the product could withstand water and dust.

60. Another YouTube video from SanDisk portrays a woman walking in the forest and taking pictures with her camera. Another scene in that forest video shows her plug her SanDisk drive in to her computer and work with photographs on the computer.<sup>37</sup> Another scene in the same video shows the SanDisk with the captions, "Rugged design" and "Rated IP55 for water-and dust-resistance."



[REG/sandisk\\_sdssde61\\_2t00\\_g25\\_2tb\\_extreme\\_portable\\_ssd.html/overview](https://www.sandisk.com/REG/sandisk_sdssde61_2t00_g25_2tb_extreme_portable_ssd.html/overview) (last accessed October 9, 2023).

<sup>37</sup> <https://www.youtube.com/watch?v=on0B70waoM8> (last accessed October 9, 2023).



## Defendants' Cost-Cutting in Recent Years

61. However, Defendants' leadership has also sought to increase Western Digital's profits by cutting costs. In August 2023, Western Digital's CEO David Goeckeler spoke at a Goldman Sachs investment conference.<sup>38</sup> Goeckeler stated he wanted to become "more Asia centric" related to their many factories and workers there, so they "brought in a new Head of Operations in Singapore, just made a huge amount of changes in the way we are organized," and "it's taken now taking a lot of cost out of the system." He mentioned paying down \$2.7 billion in debt in the 3.5 years since he became CEO.

<sup>38</sup> *Western Digital Corporation (WDC) CEO David Goeckeler Presents At Goldman Sachs Communacopia & Technology Conference (Transcript)* Seeking Alpha (call Aug. 30, 2023), <https://seekingalpha.com/article/4633225-western-digital-corporation-wdc-presents-goldman-sachs-communacopia-and-technology-conference> (accessed October 9, 2023).

1           62. Goldman Sachs analyst Toshiya Hari noted that Goeckeler talked about CapEx  
2 cuts and production cuts a couple quarters before and asked if management was “cutting into  
3 muscle.” Goeckeler stated he had brought in people whose focus was “that we’re going to put in  
4 a very disciplined ROI based portfolio approach” to know what to make and to rank “what has  
5 the highest return.” On the core focus of Western Digital’s NAND portfolio, Goeckeler  
6 mentioned a road map as the foundation of their portfolio. He stated, “You’ve got to have the  
7 best cost in the industry and we think about this very, very clearly.”<sup>39</sup>

8           63. Western Digital’s annual disclosure report to investors and the Securities and  
9 Exchange Commission echoed management’s cost-cutting drive. The Form 10-K noted that  
10 manufacturing either hard disk drives or “Flash” are complex processes to produce components  
11 with narrow tolerances that demand skilled engineering “to control the operating costs of these  
12 manufacturing environments.” It added, “We continually evaluate which steps in the  
13 manufacturing processes can improve productivity and reduce manufacturing costs.”<sup>40</sup>

14           64. Discussing risks of the business, Western Digital’s SEC disclosure stated cost  
15 saving measures and restructuring efforts could cause workforce reductions and consolidation of  
16 manufacturing and other facilities. “As a result of these actions, we may experience a loss of  
17 continuity, loss of accumulated knowledge, disruptions to our operations and inefficiency during  
18 transitional periods.” Such actions “could also impact employee retention.”<sup>41</sup>

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25 <sup>39</sup> *Id.*

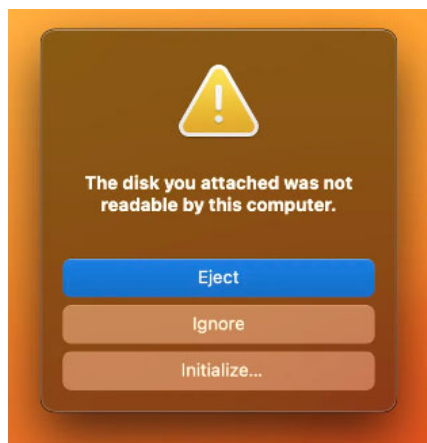
26 <sup>40</sup> Form 10-K at 7.

27 <sup>41</sup> *Id.* at 19.

## SanDisk Product Failures

65. Contrary to Defendants’ advertising and the image of reliability they seek to lean on, as of late Defendants’ reputation for quality and dependability has earned a nosedive due to failures of the drives.

66. In January 2023 complaints had begun to surface that SanDisk’s Extreme and Extreme Pro Portable SSDs were suddenly wiping data and becoming unreadable.<sup>42</sup> For example, customers encountered error messages such as:<sup>43</sup>



67. In February 2023, a Reddit user raised a flag warning about the SanDisk 4TB Extreme Pro Portable SSDs in particular, saying: “Multiple DITs/Loaders/ACs on both coasts have experienced the exact same failure with these drives over the last month. The symptom seems to be that after a sustained write they will completely lose their filesystem and it’s a total crap shoot whether you can recover it or not.” Numerous comments were posted in reply to the warning, with many users chiming in that they had experienced the same issue with their

<sup>42</sup> See Harding, *SanDisk Extreme SSDs Keep Abruptly Failing*, *supra*.

<sup>43</sup> Hollister, *We Just Lost 3TB of Data on a SanDisk Extreme SSD*, *supra*.

SanDisk Drives. Other consumers have also complained on Reddit that their SanDisk SSD drives failed.<sup>44</sup>

68. One writer complained that their SSD failed after five days of use on a Mac Studio, stating they could not force the SSD to remount or reformat it, saying “Just a brick.” Another stated his drive failed “right out of the box.” Another stated two “brand new SanDisk Pro 2TB SSDs” had “corrupted within days of original purchase,” and they were adding their drives “to the pile here.” Another writer complained their SSD died “on exfat and windows.”<sup>45</sup>

69. Another writer on that post complained of saving 250 clips from five games in their son’s sports tournament on a 1TB Extreme Pro SSD and the drive “disappeared off the desktop and were gone from the SSD when they restarted the computer.”<sup>46</sup> Another, a still photographer, described opening their Bridge photo editing software and watching as “image by image, row by row, they turned to white field with angled stripes of color, like they were being eaten by PacMan.”

70. The tech press took notice of the issue in May 2023 when many of their own staffers began to experience data loss. For example, a staffer for *Ars Technica*, a well-known tech news site, reported that two of his SanDisk 2TB Extreme Pro SSDs died, which led to the complete loss of all data on the drives.<sup>47</sup> In another example, a producer for the tech news site, *The Verge*, lost 4TB of video clips saved to his SanDisk Extreme Pro and lost 3TB of video he shot on a drive that Western Digital had sent him as a replacement.<sup>48</sup>

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<sup>44</sup>

[https://www.reddit.com/r/editors/comments/10syawa/a\\_warning\\_about\\_sandisk\\_extreme\\_pro\\_ssds/](https://www.reddit.com/r/editors/comments/10syawa/a_warning_about_sandisk_extreme_pro_ssds/) (last accessed October 9, 2023).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Harding, *SanDisk Extreme SSDs Keep Abruptly Failing*, *supra*.

<sup>48</sup> Sean Hollister, *Buyer beware: Some SanDisk Extreme SSDs are wiping people’s data*, THE VERGE (May 22, 2023), <https://www.theverge.com/2023/5/22/23733267/sandisk-extreme-pro-failure-ssd-firmware> (last accessed October 9, 2023); Hollister, *We Just Lost 3TB of Data on a SanDisk Extreme SSD*, *supra*.



## Defendants' Failure to Cure

71. After multiple articles calling attention to the problem, Defendants pushed a firmware update for the affected drives at the end of May.<sup>49</sup> Western Digital has stated that it had “identified a firmware issue that can cause SanDisk Extreme Portable SSD V2, SanDisk Extreme Pro Portable SSD V2, and WD My Passport SSD products to unexpectedly disconnect from a computer.”<sup>50</sup> Defendants’ statement on the firmware update continues, “To address and resolve this issue, we have developed a firmware updater tool that allows the needed firmware to be installed, enabling your continued use of the SSD on your Windows and/or macOS device.”<sup>51</sup> However, the SSD product failures go well beyond a connection issue because the data are lost without warning and cannot be accessed or retrieved. Accordingly, Defendants’ representation is misleading because it lulls customers rather than warning them they may suddenly and totally lose their data and be unable to retrieve it.

72. An August 10, 2023, article in ARS TECHNICA reported Western Digital had released the firmware update in May 2023 and stated Defendants claimed that their firmware update would solve the problem, saying “[w]e addressed this firmware issue in the manufacturing process, and we can confirm that the issue is not impacting currently shipping products.”<sup>52</sup>

73. However, even after the May firmware update, the problems persisted. For example, on August 7, 2023, a staffer at *The Verge* had yet another SSD fail.<sup>53</sup>

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<sup>49</sup> Sharon Harding, *SanDisk’s Silence Deafens as High-Profile Users Say Extreme SSDs Still Broken*, ARS TECHNICA, Aug. 10, 2023 (<https://arstechnica.com/gadgets/2023/08/sandisk-extreme-ssds-are-still-wiping-data-after-firmware-fix-users-say/>) (last accessed October 9, 2023).

<sup>50</sup> <https://support-en.wd.com/app/firmwareupdate> (last accessed October 9, 2023).

<sup>51</sup> *Id.*

<sup>52</sup> Harding, *SanDisk’s Silence Deafens*, *supra*.

<sup>53</sup> See Hollister, *We Just Lost 3TB of Data on a SanDisk Extreme SSD*, *supra*.

74. In August 2023, a Reddit user posted: “I literally lost all my data two weeks ago thanks to SanDisk. And my backup drive, a WD passport, failed on the same night. SanDisk is owned by WD. So guess all WD drives are [\*\*\*\*]. I lost 5 years of work.”<sup>54</sup> On the same day, another Reddit user posted: “I work in digital media and have had an untold number of friends and colleagues lose data because of the recent SanDisk drive failures. I personally had two brand new Extreme Pro SSDs corrupt this summer, both within days of purchasing. I’ve used these drives for years and never lost data before, but twice in two weeks has scared me away from ever purchasing Sandisk storage again.”<sup>55</sup>

75. Many of the consumers affected by the defect are professionals who have had decades of experience with use and maintenance of data-storage devices. The failures were not a result of user error, but symptomatic of a widespread defect in the design and manufacture of the Drives. This slew of device failures is contrary to Defendants’ representations of the Drives as reliable and dependable storage options.

76. The aforementioned August 10, 2023, ARS TECHNICA article reported that a *Verge* producer complained that “the **replacement** portable SSD SanDisk sent supervising producer Vjeran Pavic after his 4TB Extreme Pro Portable inadvertently wiped 4 TB of video” (emphasis added). The replacement “was supposed to include the firmware fix, but The Verge reportedly ‘still lost 3TB of video we’d shot for the Verge because the drive is no longer readable.’” The article noted recent online complaints about product failures of products most likely shipped after the purported May 2023 firmware update. The article reported that neither SanDisk nor Western Digital PR representatives had responded to ARS TECHNICA’s request for comments, and apparently not to inquiries by *The Verge* or PetaPixel. The article concluded that SanDisk’s firmware update page “fails to prove SanDisk is taking the threat of customer loss

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<sup>54</sup>

[https://www.reddit.com/r/gadgets/comments/15noi3k/sandisks\\_silence\\_deafens\\_as\\_highprofile\\_users\\_say/](https://www.reddit.com/r/gadgets/comments/15noi3k/sandisks_silence_deafens_as_highprofile_users_say/) (last accessed October 12, 2023).

<sup>55</sup> *Id.*



seriously, as it merely states that the affected products can ‘unexpectedly disconnect from a computer.’”<sup>56</sup>

**Defendants Knew or Should Have Known About the Defect Since at Least January 2023**

77. SanDisk appears to have been on notice of this problem for a significant amount of time. In March of 2023, Reddit user KengoSawa2 posted: “This problem is also occurring in Japan. I am a post-production engineer and I encountered the same problem. I can’t give you more details, *but the problem was recognized by the Japanese distributor and passed on to SanDisk*, and is now being verified by the developer. I am also told that this problem is causing a fuss and is only for those manufactured after November 2022. My gut feeling is that this appears to be a design defect due to a minor change or a lot defect due to a problem during manufacturing. In any case, we should continue to report this to the manufacturer to prompt an official statement from Sandisk.”<sup>57</sup> (Emphasis added).

78. SanDisk acknowledged that Western Digital was aware of reports with certain 4TB SDDs in May 2023, but misleadingly stated it had resolved the issue and would “publish a firmware update” soon.<sup>58</sup>

79. At the time Defendants were selling SanDisk Extreme SSD Drives, Defendants would have had access to their internal technical specifications and testing for the SSD Drives that should have revealed the existence of this defect. For example, Western Digital disclosed to investors and the SEC (but not to its customers) that it has a testing processes and has engaged third parties in multiple regions and countries “to provide various levels of testing, processing, or recertification of returned products for our customers.”<sup>59</sup> Western Digital also stated it has “in-

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<sup>56</sup> Harding, *SanDisk’s Silence Deafens*, *supra*.

<sup>57</sup> [https://www.reddit.com/r/editors/comments/10syawa/a\\_warning\\_about\\_sandisk\\_extreme\\_pro\\_ssds](https://www.reddit.com/r/editors/comments/10syawa/a_warning_about_sandisk_extreme_pro_ssds) (accessed October 9, 2023).

<sup>58</sup> Harding, *SanDisk Extreme SSDs Keep Abruptly Failing*, *supra*.

<sup>59</sup> Form 10-K at 9.

1 house assembly and test operations” in Shanghai, China, and Penang, Malaysia.<sup>60</sup> However, it  
2 recently disclosed to investors (but not customers) in that SEC form that its testing “may fail to  
3 reveal defects in our products that may not become apparent until after the products have been  
4 sold into the market.”<sup>61</sup>

5 80. Despite this, Defendants have not recalled the Drives or taken any action to  
6 remove the Drives from the market.

7 81. In Western Digital’s June 30, 2023, annual SEC disclosure form, it admitted on  
8 page 38 that its consolidated gross profits for fiscal year 2023 (ending June 30, 2023) were down  
9 from fiscal year 2022, reflecting decreased revenue, underutilization of manufacturing, “**and a**  
10 **write-down of certain Flash inventory** to the lower of cost or market value (\$404 million in  
11 flash and \$201 million in HDD), partially offset related to “a contamination event in the Flash  
12 Ventures’ fabrication facilities incurred in the prior year” and amortization changes.<sup>62</sup>

13 82. Defendants’ attempt to liquidate their defective Drives does nothing to change the  
14 situation for the thousands of consumers who have lost their data. It does nothing to help them  
15 recover that data. All it does is place an ever-growing population of consumers, who trust  
16 Defendants products, at risk of losing critical data.

17 83. Defendants marketed and sold the Drives to Plaintiff and other customers with the  
18 suggestions to store data on the drives, including photographs and video footage, and therefore  
19 intended to affect Plaintiff and Class Members by encouraging them to use the Drives for those  
20 purposes. Based on the foregoing facts, the harm to Plaintiff and other Class Members from  
21 having their photographs, videos, and other data disappear from their Drives was foreseeable  
22 when Defendants marketed and sold the Drives. Plaintiffs and the Class certainly suffered harm  
23 from the failure of their Drives that was directly connected to Defendants’ misconduct.

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24  
25 <sup>60</sup> Form 10-K at 8.

26 <sup>61</sup> Form 10-K at 15.

27 <sup>62</sup> Form 10-K at 38 (emphasis added).

1 Defendants' conduct in merely writing down the value of its defective drives and selling them  
2 without disclosing the Defect is particularly blameworthy. Defendants' actions and their failing  
3 to compensate class members for losses imposed in this manner could encourage Defendants or  
4 other manufacturers to act similarly, causing widespread data loss damage to many businesses,  
5 government agencies, healthcare facilities, and individuals. Accordingly, Plaintiff and the Class  
6 were and should be considered intended beneficiaries of the sales of the Drives to them.

7 84. Defendants have not come clean since the complaints began about their defective  
8 drives. A post on reddit from May 2023 stated that three weeks before the writer attended a trade  
9 show and spoke to a Western Digital representative about the problems. The representative told  
10 him the problem affected specific and limited set of circumstances for four terabyte (TB) SSD  
11 Drives manufactured between January and March 2023 "that are plugged into a Mac for more  
12 than 4 hours." A reply to that post pointed out that they purchased their four TB SanDisk  
13 Extreme Pro Portable SSD 4TB in December 2022 and it had the same issue, and that numerous  
14 posts on that forum and others mentioned the problems occurring on Windows computers.<sup>63</sup>

15 **DEFENDANTS' STATEMENTS AND OMISSIONS VIOLATE CALIFORNIA LAWS**

16 85. California law is designed to ensure that a company's claims about its products  
17 are truthful and accurate.

18 86. Defendants violated California law by negligently, recklessly, and/or intentionally  
19 incorrectly claiming the Drives were capable of dependably and reliably saving, storing, and  
20 retrieving data and by not disclosing the Defect to consumers.

21 87. Defendants have engaged in a long-term marketing campaign, originating at their  
22 headquarters, to convince potential customers in California and in the other United States that the  
23 Drives were dependably and reliably capable of saving, storing, and retrieving data.

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27 <sup>63</sup> [https://www.reddit.com/r/editors/comments/10syawa/a\\_warning\\_about\\_sandisk\\_extreme\\_pro\\_ssds/](https://www.reddit.com/r/editors/comments/10syawa/a_warning_about_sandisk_extreme_pro_ssds/) (last accessed October 9, 2023).

**CONSUMERS' RELIANCE WAS REASONABLE AND FORESEEN BY DEFENDANTS**

88. Reasonable consumers, like Plaintiff, reasonably relied on Defendants' claims, warranties, representations, advertisements, other marketing concerning the particular qualities and benefits of the Drives.

89. Further, Plaintiff read and relied upon the labels and other marketing materials of the Drives when making its purchasing decisions. Had Plaintiff known Defendants had omitted and failed to disclose the Defect from its labels and marketing materials, it would not have purchased the Drive.

90. Reasonable consumers, like Plaintiff, would consider the labeling and marketing of products, such as the Drives, when deciding whether to purchase, such as specific statements and omissions on the Drives' labeling and marketing that would lead them to believe the Drives were capable of dependably and reliably saving, storing, and retrieving data.

91. Here, Plaintiff relied on the specific statements and omissions on the Drives' labeling and marketing that led it to believe they were capable of dependably and reliably saving, storing, and retrieving data.

**CLASS ALLEGATIONS**

92. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3), on behalf of itself and all other similarly situated consumers, and seeks to represent a class defined as:

All persons and entities in the United States who purchased a Drive for household or business use from July 1, 2019, to the present (the "Class"). Excluded from the Class are persons who made such purchase for purpose of resale.

93. Members of the Class are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Class number in the thousands. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendants and third-party

1 retailers and vendors. Class members are located both in California and in the other United  
2 States.

3 94. Common questions of law and fact exist as to all Class members and predominate  
4 over questions affecting only individual Class members. Common legal and factual questions  
5 include, but are not limited to:

- 6 a) Whether the Drives are defective;
- 7 b) Whether the Defect is hardware based or software based;
- 8 c) Whether Defendants knew or should have known about the Defect before  
9 selling the Drives to the public;
- 10 d) Whether Defendants failed to disclose the Drives' defect;
- 11 e) Whether the claims of Plaintiff and the Class serve a public benefit;
- 12 f) Whether Defendants' packaging is false, deceptive, and misleading based on  
13 the Omissions;
- 14 g) Whether the Omissions are material to a reasonable consumer;
- 15 h) Whether the Omissions are likely to deceive a reasonable consumer;
- 16 i) Whether Defendants had knowledge that the Omissions were material and  
17 false, deceptive, and misleading;
- 18 j) Whether Defendants owed a duty of care;
- 19 k) Whether Defendants owed a duty to disclose;
- 20 l) Whether Defendants breached its duty of care;
- 21 m) Whether Defendants violated the laws of the State of California;
- 22 n) Whether Defendants breached its implied warranties;
- 23 o) Whether Defendants engaged in unfair trade practices;
- 24 p) Whether Defendants engaged in false advertising;
- 25 q) Whether Defendants made fraudulent omissions;
- 26 r) Whether Plaintiff and Class members are entitled to actual, statutory, and  
27 punitive damages;
- 28 s) Whether Plaintiff and Class members are entitled to declaratory and  
injunctive relief;

1 t) Where Defendants made their marketing and advertising strategies and what  
2 were their target markets.

3 95. Defendants engaged in a common course of conduct giving rise to the legal rights  
4 sought to be enforced by Plaintiff individually and on behalf of the other Class members.  
5 Identical statutory violations and business practices and harms are involved. Individual  
6 questions, if any, are not prevalent in comparison to the numerous common questions that  
7 dominate this action.

8 96. Plaintiff's claims are typical of the claims of the Class members in that they are  
9 based on the same underlying facts, events, and circumstances relating to Defendant's conduct.

10 97. Plaintiff will fairly and adequately represent and protect the interests of the Class,  
11 has no interests incompatible with the interests of the Class, and has retained counsel competent  
12 and experienced in class action, consumer protection, and false advertising litigation.

13 98. Class treatment is superior to other options for resolution of the controversy  
14 because the relief sought for each Class member is small such that, absent representative  
15 litigation, it would be infeasible for Class members to redress the wrongs done to them.

16 99. Questions of law and fact common to the Class predominate over any questions  
17 affecting only individual members of the Class.

18 100. As a result of the foregoing, class treatment is appropriate.

19 **FIRST CAUSE OF ACTION**

20 **Breach of Implied Warranty of Merchantability Against Defendants**  
21 **on Behalf of the Class**

22 101. Plaintiff incorporates by reference the allegations contained in the paragraphs  
23 above as if set forth fully herein.

24 102. Defendants are merchants engaging in the sale of goods to Plaintiff and the Class  
25 members.

26 103. There was a sale of goods from Defendants to Plaintiff and the Class members.

27 104. As set forth herein, Defendants manufactured and sold the Drives, and prior to the  
28 time the Drives were purchased by Plaintiff and the Class members, impliedly warranted that the

1 Drives were fit for their ordinary use as data storage devices as they do not dependably or  
2 reliably save, store, or retrieve data.

3 105. Plaintiff and the Class members relied on these implied warranties when they  
4 purchased the Drives.

5 106. These promises became part of the basis of the bargain between Defendants and  
6 Plaintiff and the Class members, and thus constituted implied warranties.

7 107. Defendants breached the implied warranties by selling Drives that do not  
8 dependably or reliably save, store, or retrieve data.

9 108. Defendants were on notice of this breach as they were aware of the Defect.  
10 SanDisk stated in May 2023 that Western Digital was aware of a problem for its 4TB Drives and  
11 falsely stated it had solved the problem. However, customers continued to report problems with  
12 the Drives after this purported solution, including with Defendants' replacement drives.

13 109. The Drives were defective when they left Defendants' exclusive control.

14 110. Privity exists because Defendants impliedly warranted to Plaintiff and the Class  
15 members through the packaging that the Drives were not able to dependably or reliably save,  
16 store, or retrieve data and by failing to mention or disclose the Defect.

17 111. Defendants knew that the Drives would be purchased and used without additional  
18 testing by Plaintiff and Class members.

19 112. As a direct and proximate result of Defendants' breach of their implied  
20 warranties, Plaintiff and the Class members suffered actual damages as they purchased the  
21 Drives that were worth less than the price paid and that they would not have purchased at all had  
22 they known of the Defect.

23 113. Plaintiff, on behalf of itself and the Class members, seeks actual damages for  
24 Defendants' failure to deliver goods that conform to their implied warranties and resulting  
25 breach.

**SECOND CAUSE OF ACTION**

**Unjust Enrichment Against Defendants on Behalf of the Class**

114. Plaintiff incorporates by reference the allegations contained in the paragraphs above as if set forth fully herein. This claim is alternative to the first and third through fifth cause of action, pursuant to Fed. R. Civ. P. 8(d)(2).

115. Substantial benefits have been conferred to Defendants by Plaintiff and the Class members through the purchase of the Drives. Defendants knowingly and willingly accepted and enjoyed these benefits.

116. Defendants either knew or should have known that the payments rendered by Plaintiff and the Class members were given and received with the expectation that the Drives would dependably or reliably save, store, or retrieve data. As such, it would be inequitable for Defendants to retain the benefit of the payments under these circumstances.

117. Defendants were obligated to disclose the Defect because:

(a) Defendants had exclusive knowledge of the Defect that was not known or reasonably accessible to Plaintiff and the Class members;

(b) Defendants actively concealed the Defect from Plaintiff and the Class members; and

(c) Defendants made partial statements on the Drives' packaging that gave a misleading impression to reasonable consumers without further information because the Defect had not been disclosed.

118. Defendants' acceptance and retention of these benefits of the payments from Plaintiff and the Class members under the circumstances alleged herein make it inequitable for Defendants to retain the benefits without payment of the value to Plaintiff and the Class members.

119. Plaintiff and the Class members are entitled to recover from Defendants all amounts wrongfully collected and improperly retained by Defendants, plus interest thereon.

120. Plaintiff and the Class members seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available under the laws.



**THIRD CAUSE OF ACTION**  
**Violations of the Unfair Competition Law, California Business & Professions Code  
§§ 17200, et seq., Against Defendants on Behalf of the Class**

121. Plaintiff incorporates by reference the allegations contained in the paragraphs above as if set forth fully herein.

122. The Unfair Competition Law prohibits any “unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act.” Cal. Bus. & Prof. Code § 17200.

123. Plaintiff has standing to pursue this claim as it lost money and property when one of its Drives failed, causing it to lose all of the data stored on that drive, which contained video and photographic images taken for its business purposes. In addition to the loss of the property on Plaintiff’s Drive, Plaintiff’s loss also includes the money it spent on a drive that has no value. Upon discovery of the drive failure, Plaintiff stopped using both of the SSDs it had purchased due to the Drive being unfit for its intended purpose.

***Fraudulent***

124. Defendants’ failure to disclose the Defect is likely to deceive the public.

***Unlawful***

125. As alleged herein, Defendants’ failure to disclose the Defect violates at least the following laws:

- The False Advertising Law, California Business & Professions Code §§ 17500, et seq.

***Unfair***

126. Defendants’ conduct with respect to the packaging and sale of the Drives is unfair because Defendants’ conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of their conduct, if any, does not outweigh the gravity of the harm to their victims.

1           127. Defendants' conduct with respect to the packaging and sale of the Drives is also  
2 unfair because it violates public policy as declared by specific constitutional, statutory, or  
3 regulatory provisions, including, but not limited to, the False Advertising Law.

4           128. Defendants' conduct with respect to the packaging and sale of the Drives is also  
5 unfair because the consumer injury is substantial, not outweighed by benefits to consumers or  
6 competition, and not one that consumers, themselves, can reasonably avoid.

7           129. Defendants were obligated to disclose the Defect because:

8                   (a) Defendants had exclusive knowledge of the Defect that was not known or  
9 reasonably accessible to Plaintiff and the Class members;

10                   (b) Defendants actively concealed the Defect from Plaintiff and the Class  
11 members; and

12                   (c) Defendants made partial statements on the Drives' packaging that gave a  
13 misleading impression to reasonable consumers without further information because the Defect  
14 had not been disclosed.

15           130. The Omissions were contrary to the representations Defendants made on the  
16 Drives' packaging.

17           131.

18           132. Plaintiff and the Class members relied upon the Drives' packaging provided to  
19 them by Defendants when making their purchasing decisions. Had Plaintiffs and the Class  
20 members known Defendants failed to disclose the Defect from their packaging, they would not  
21 have purchased the Drives.

22           133. In accordance with California Business & Professions Code § 17203, Plaintiff  
23 seeks an order enjoining Defendants from continuing to conduct business through fraudulent or  
24 unlawful acts and practices and to provide complete and accurate disclosures regarding the  
25 Drives. Defendants' conduct is ongoing and continuing, such that prospective injunctive relief is  
26 necessary.



143. Plaintiff and the Class members are entitled to injunctive and equitable relief and restitution in the amount they spent on the Drives.

## **FIFTH CAUSE OF ACTION**

### Fraud by Omission Against Defendants on Behalf of the Class

144. Plaintiff incorporates by reference the allegations contained in the paragraphs above as if set forth fully herein.

145. Defendants concealed from and failed to disclose to Plaintiff and the Class members the Defect associated with their Drives that do not conform to the products' labels, packaging, advertising, and statements.

146. Defendants were under a duty to disclose to Plaintiff and the Class members the true quality, characteristics, ingredients, and suitability of the Drives because:

(a) Defendants were in a superior position to know the true state of facts about their products;

(b) Defendants were in a superior position to know the actual components, characteristic, and suitability of the Drives for use as a data storage device; and

(c) Defendants knew that Plaintiff and the Class members could not reasonably have been expected to learn or discover that the Drives were misrepresented in the labels, packaging, advertising, and websites prior to purchasing the Drives.

147. The facts concealed or not disclosed by Defendants to Plaintiff and the Class members are material in that a reasonable consumer would have considered them important when deciding whether to purchase the Drives.

148. Plaintiff and the Class members justifiably relied on Defendants' omissions to their detriment. The detriment is evidence from the true quality, characteristics, and components of the Drives, which is inferior when compared to how the Drives are advertised and represented by Defendants.

149. As a direct and proximate result of Defendants' conduct, Plaintiff and the Class members have suffered actual damages in that they purchased the Drives that were worth less than the price they paid and that they would not have purchased at all had they known of the

1 Defect associated with the Drives that do not conform to the products' labels, packaging,  
2 advertising, and statements.

3 150. Plaintiff and the Class members seek actual damages, injunctive and declaratory  
4 relief, attorneys' fees, costs, and any other just and proper relief available under the laws.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks  
7 judgment against Defendants, as to each and every count, including:

8 A. An order certifying this case as a class action, appointing Plaintiff and his  
9 counsel to represent the Class, and requiring Defendants to bear the costs of class notice;

10 B. An order enjoining Defendants to engage in a corrective advertising  
11 campaign and engage in any further necessary affirmative injunctive relief, such as recalling  
12 existing products;

13 C. An order awarding declaratory relief, and any further retrospective or  
14 prospective injunctive relief permitted by law or equity, including enjoining Defendants from  
15 continuing the unlawful practices allege herein, and injunctive relief to remedy Defendants' past  
16 conduct;

17 D. An order requiring Defendants to pay restitution to restore all funds  
18 acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or  
19 fraudulent business act or practice, untrue or misleading advertising, or a violation of law, plus  
20 pre- and post-judgment interest thereon;

21 E. An order requiring Defendants to disgorge or return all monies, revenues,  
22 and profits obtained by means of any wrongful or unlawful act or practice;

23 F. An order requiring Defendants to pay all actual and statutory damages  
24 permitted under the counts alleged herein;

25 G. An order requiring Defendants to pay punitive damages on any count so  
26 allowable;

1 H. An order awarding attorneys' fees and costs to Plaintiff and the Class  
2 members; and

3 I. An order providing for all other such equitable relief as may be just and  
4 proper.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff demands a trial by jury on all claims so triable.

7  
8 Dated: October 17, 2023

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